



**STATE OF MISSOURI
OFFICE OF ADMINISTRATION
OFFICE OF THE ADJUTANT GENERAL
REQUEST FOR BID**

RFB NO. B5SRS06

TITLE: Maintenance/Repair of Kitchen Equipment

ISSUE DATE: 04/15/05

BUYER: Becky John

PHONE NO.: (573)638-9500 Ext. 7741

E-MAIL: Rebecca.John@mo.ngb.army.mil

RETURN BID NO LATER THAN: 05/15/05

RETURN BID TO:

Office of The Adjutant General

ATTN: JFMO-SRS

6801 N Boundary Road

Jefferson City, MO 65101

CONTRACT PERIOD: Date of Award through One Year

DELIVER SUPPLIES/SERVICES FOB DESTINATION TO THE FOLLOWING ADDRESS:

OFFICE OF THE ADJUTANT GENERAL

ATTN: Cafeteria Services

2302 MILITIA DRIVE

JEFFERSON CITY, MO 65101-1203

The bidder hereby declares understanding, agreement and certification of compliance to provide the items and/or services, at the prices quoted, in accordance with all requirements and specifications contained herein and the Terms and Conditions Request for Bid (Revised 04/01/05). The bidder further agrees that the language of this RFB shall govern in the event of a conflict with his/her bid. The bidder further agrees that upon receipt of an authorized purchase order from the Office of The Adjutant General or when this RFB is countersigned by an authorized official of the State of Missouri, a binding contract shall exist between the bidder and the State of Missouri.

SIGNATURE REQUIRED

AUTHORIZED SIGNATURE		DATE	
PRINTED NAME		TITLE	
COMPANY NAME			
MAILING ADDRESS			
CITY, STATE, ZIP			
VENDOR NO. (IF KNOWN)		FEDERAL EMPLOYER ID NO.	
PHONENO.	FAX NO.	E-MAIL ADDRESS	

NOTICE OF AWARD (STATE USE ONLY)

ACCEPTED BY STATE OF MISSOURI AS FOLLOWS:			
CONTRACT NO.		CONTRACT PERIOD	
BUYER	DATE	DIRECTOR	

1. INTRODUCTION AND GENERAL INFORMATION

1.1 Introduction:

- 1.1.1 This document constitutes a Request for Bid, for Preventive Maintenance and Repair Services as set forth herein.
- 1.1.2 This document, referred to as a Request for Bid (RFB), is divided into the following parts:
 - a. Contractual Requirements
 - b. Bid Submission Information
 - c. Pricing Page(s)
 - d. Attachment 1
 - e. Attachment 2
 - f. Exhibit A
 - g. Exhibit B

2. CONTRACTUAL REQUIREMENTS

2.1 General Requirements:

- 2.1.1 The contractor shall provide preventive maintenance and repair services for the Cafeteria Services located at 2302 Militia Drive, Jefferson City, MO for the Adjutant General's Office, (hereinafter referred to as the "*state agency*"), in accordance with the requirements set forth herein.
- 2.1.2 The contractor must perform all maintenance services as required herein in a manner satisfactory to and acceptable by the state agency in order to maintain all equipment in a safe and operational condition. The contractor shall agree and understand that the state agency shall assign a contact person to inspect, review, oversee, and coordinate maintenance services with the contractor.
- 2.1.3 The contractor shall provide services for all equipment specified by the state agency. However, at any time during the effective period of the contract, the state agency reserves the rights to change, add to, or delete equipment for which the contractor shall provide services. In such event, payment to the contractor shall be adjusted as specified in the Payment and Invoicing Requirements of this document.
- 2.1.4 A site visit for those who wish to view the equipment is scheduled for April 29, 2005 at 9:00 AM at the Office of The Adjutant General, 2302 Militia Drive, Jefferson City, MO. Bidders are asked to pre-register for the site visit by calling the Procurement Manger at 573-638-9500 Ext. 7741 by noon April 27, 2005. If no contractors register for the site visit, the event will be cancelled without further notice.

2.2 Equipment and Supply Requirements:

- 2.2.1 The contractor must furnish and maintain, in good repair, all equipment necessary to perform the requirements of the contract.
 - a. The contractor may either own or rent, at the contractor's expense, equipment for performing the requirements of the contract.

2.2.2 The state agency shall furnish a list of all equipment requiring preventative maintenance and repair services on Attachment #1.

2.2.3 The contractor shall not use any equipment that may be injurious or damaging to the surfaces upon which they shall be applied.

2.3 Specific Service Requirements:

2.3.1 The contractor shall perform quarterly preventive maintenance annually with unlimited interim services, and all labor, materials, tools, equipment, and supervision for repairing the equipment listed on Attachment #1.

2.3.2 Preventive maintenance service shall include as a minimum, thorough cleaning of all equipment, checking to determine equipment condition and adjustment, and (or) replacement of parts as necessary to include but limited to air filters and water filters.

2.3.3 The contractor shall perform the preventive maintenance at a time mutually agreed upon between the state agency and the contractor.

2.3.4 The contractor shall provide interim repair services for all equipment listed on Attachment # 1 within four (4) hours of notification by the state agency. The contractor shall evaluate the scope of work, determining the equipment problem and the correct repair solution. The contractor shall provide a price quote, based on the contract unit pricing for the repair work. If accepted, the state agency shall give the contractor a verbal notice to proceed.

2.3.5 The state agency shall stipulate whether the contractor will quote prices for regular time, overtime, or a combination thereof. The state agency will inform the contractor to perform the work during normal working hours or a combination of normal and after work hours. The contractor shall only work overtime when specifically told to do so.

2.3.6 The contractor shall have eighty-five percent of all parts on-site within four business hours for the repair of equipment. All remaining parts shall be on-site within eight working hours. Refurbished parts may be used on an exchange basis; however, the refurbished parts shall be equivalent to new. Maintenance does not include normal operating supplies.

2.3.7 The contractor shall have service technicians fully qualified to work on the listed equipment and employed by the contract on the effective date of this contract. The contractor shall be able to verify that service personnel have had the training with a minimum of one year of "hands on" experience working on the listed equipment.

2.3.8 The contractor can not sub-contract all or any portion of the work assigned under this contract. All work must be performed by the contractor's work forces.

2.3.9 Included in the labor rates shall be travel means (truck and gas), and any and all equipment and tools required. The contractor shall not charge the state agency for travel time to and from the work site or workers' lunch breaks. The state agency shall pay only for actual time on the job.

2.3.10 In the interest of clarification, the following definitions shall apply to this contract: regular hours will be Monday thru Friday between the hours of 08:00 AM to 05:00 PM, overtime hours will be Monday thru Friday between the hours of 05:00 PM to 08:00 AM, weekends and holidays. A listing of holidays are included in Attachment 2.

- 2.3.11 The contractor will notify the state agency immediately of any unexpected emergency, subsurface or latent physical condition found; along with the recommendations for dealing with the matter. All official correspondence in regard to the specifications should be directed to, and will be issued by the Procurement Manager.
- 2.3.12 The contractor shall be responsible to remove all of their debris for the work area and clean effected work areas. The contractor shall keep the premises free of debris and unusable materials resulting from their work and as work progresses; or upon request by the Cafeteria Services Manager, shall remove such debris and materials from state agency's property. The contractor shall leave all affected areas as they were prior to beginning work.
- 2.3.13 If the work to be performed under this contract requires the use of any product which contains any ingredient that could be hazardous or injurious to a person's health, a Material Safety Data Sheet (MSDS) must be provided to the Procurement Manager, 6801 N Boundary Road, Jefferson City, MO 65101.
- 2.3.14 The contractor shall be responsible for the safeguarding of their own materials, tools and equipment. The state agency shall not assume any responsibility for vandalism and/or theft of materials, tools and/or equipment.
- 2.3.15 All work shall be done in safe manner and comply with all governing regulations concerning safety. This shall include, but not limited to OSHA, MOSHA, etc. Adequate barricades shall be erected and maintained all around work areas where equipment and materials are stored and used. All work being performed for and/or on state agency property shall fully conform to all local, state and federal safety regulations.
- 2.3.16 If requested by the state agency, all existing mechanical and electrical systems and mechanisms within the area of the affected area by this work shall be checked by the contractor in the presence of the state agency's representative (Food Preparation Manager) for proper operation before and after completion of the work.
- 2.3.17 The state agency uses Inmate Labor on a daily basis for dishwashing and cleaning. The contractor shall be aware of this when working in the area. Contact with the inmates should be kept to a minimum.
- 2.3.18 The contractor shall deal directly with the Food Preparation Manager once the contract has been awarded. All correspondence and telephone conversations pertaining to the performance of the contract should be directed to the Food Preparation Manager. All questions regarding the bid process or specifications should be directed to the Procurement Manager at 573-638-9500 Ext. 7741.

2.4 Payment and Invoicing Requirements:

- 2.4.1 The contractor shall submit an itemized invoice for services actually provided to the address stated below. The contractor must include the firm, fixed price, contract number, and the dates of service on each itemized invoice.

Office of The Adjutant General
ATTN: Cafeteria Services
2302 Militia Drive

Jefferson City, MO 65101-1203

- 2.4.2 The contractor shall be paid the firm, fixed price specified on the pricing page of this document for services actually provided. If a partial month of service is provided, the monthly amount due shall be divided by the total number of work days in that particular month to obtain a daily rate, and then multiplied by the number of days in that particular month for which service was provided, rounded to the nearest cent.
- 2.4.3 Other than the payment(s) specified above, no other payments or reimbursements shall be made to the contractor for any reason whatsoever.

2.5 Other Contractual Requirements:

- 2.5.1 **Contract Period** - The original contract period shall be as stated in the Request for Bid (RFB). The contract shall not bind, nor purport to bind, the state for any contractual commitment in excess of the original contract period. The Office of The Adjutant General shall have the right, at its sole option, to renew the contract for two (2) additional one-year periods, or any portion thereof. In the event the Office of The Adjutant General exercises such right, all terms and conditions, requirements and specifications of the contract shall remain the same and apply during the renewal period, pursuant to applicable option clauses of this document.
- 2.5.2 **Renewal Periods** - If the option for renewal is exercised by the Office of The Adjutant General, the contractor shall agree that the prices stated in the original contract shall not be increased in excess of the maximum price for the applicable renewal period stated on the Pricing Page of the contract.
- a. If renewal prices are not provided then prices during renewal periods shall be the same as during the original contract period.
 - b. The Office of The Adjutant General does not automatically exercise its option for renewal based upon the maximum price and reserves the right to offer or to request renewal of the contract at a price less than the maximum price stated.
- 2.5.3 **Termination** - The Office of The Adjutant General reserves the right to terminate the contract at any time, for the convenience of the State of Missouri, without penalty or recourse, by giving written notice to the contractor at least thirty (30) calendar days prior to the effective date of such termination. The contractor shall be entitled to receive just and equitable compensation for services and/or supplies delivered to and accepted by the State of Missouri pursuant to the contract prior to the effective date of termination.
- 2.5.4 **Contractor Liability** - The contractor shall be responsible for any and all injury or damage as a result of the contractor's negligence involving any equipment or service provided under the terms and conditions, requirements and specifications of the contract. In addition to the liability imposed upon the contractor on account of personal injury, bodily injury (including death), or property damage suffered as a result of the contractor's negligence, the contractor assumes the obligation to save the State of Missouri, including its agencies, employees, and assigns, from every expense, liability, or payment arising out of such negligent act. The contractor also agrees to hold the State of Missouri, including its agencies, employees, and assigns, harmless for any negligent act or omission committed by any subcontractor or other person employed by or under the supervision of the contractor under the terms of the contract. However, the contractor shall

not be responsible for any injury or damage occurring as a result of any negligent act or omission committed by the State of Missouri, including its agencies, employees, and assigns.

- 2.5.5 **Insurance** - The contractor shall understand and agree that the State of Missouri cannot save and hold harmless and/or indemnify the contractor or employees against any liability incurred or arising as a result of any activity of the contractor or any activity of the contractor's employees related to the contractor's performance under the contract. Therefore, the contractor must acquire and maintain adequate liability insurance in the form(s) and amount(s) sufficient to protect the State of Missouri, its agencies, its employees, its clients, and the general public against any such loss, damage and/or expense related to his/her performance under the contract.
- 2.5.6 **Contractor Status** - The contractor represents himself or herself to be an independent contractor offering such services to the general public and shall not represent himself/herself or his/her employees to be an employee of the State of Missouri. Therefore, the contractor shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, workers compensation, employee insurance, minimum wage requirements, overtime, etc., and agrees to indemnify, save, and hold the State of Missouri, its officers, agents, and employees, harmless from and against, any and all loss; cost (including attorney fees); and damage of any kind related to such matters.
- 2.5.7 **Coordination** - The contractor shall fully coordinate all contract activities with those activities of the state agency. As the work of the contractor progresses, advice and information on matters covered by the contract shall be made available by the contractor to the state agency or the Office of The Adjutant General throughout the effective period of the contract.
- 2.5.8 **Property of State** - All reports, documentation, and material developed or acquired by the contractor as a direct requirement specified in the contract shall become the property of the State of Missouri. The contractor shall agree and understand that all discussions with the contractor and all information gained by the contractor as a result of the contractor's performance under the contract shall be confidential and that no reports, documentation, or material prepared as required by the contract shall be released to the public without the prior written consent of the state agency.
- 2.5.9 **Substitution of Personnel** - The contractor agrees and understands that the State of Missouri's agreement to the contract is predicated in part on the utilization of the specific individual(s) identified in the bid. Therefore, the contractor agrees that no substitution of such specific individual(s) and/or personnel qualifications shall be made without the prior written approval of the state agency. The contractor further agrees that any substitution made pursuant to this paragraph must be equal or better than originally proposed and that the state agency's approval of a substitution shall not be construed as an acceptance of the substitution's performance potential. The State of Missouri agrees that an approval of a substitution will not be unreasonably withheld.

3. BID SUBMISSION INFORMATION

3.1 Submission of Bids:

- 3.1.1 When submitting a bid, the bidder should include their original bid.
- 3.1.2 To facilitate the evaluation process, the bidder is encouraged to organize their bid into distinctive sections that correspond with the individual evaluation categories described herein.

- a. Each distinctive section should be titled with each individual evaluation category and all material related to that category should be included therein.
 - b. The signed page one from the original RFB and all signed amendments should be placed at the beginning of the bid.
- 3.1.3 The bidder is cautioned that it is the bidder's sole responsibility to submit information related to the evaluation categories and that the State of Missouri is under no obligation to solicit such information if it is not included with the bid. The bidder's failure to submit such information may cause an adverse impact on the evaluation of the bid.
- 3.1.4 The bidder can submit their bid by mail or fax. Bids must be mailed to Office of The Adjutant General, ATTN: JFMO-SRS, 6801 N Boundary Road, Jefferson City, MO 65101. Envelopes must state in the lower left hand corner "BID DO NOT OPEN IN MAIL ROOM". Faxed bids must include a cover sheet showing vendor's name and contact name and phone number.

3.2 Evaluation Process:

- 3.2.1 Preference for Organizations for the Blind and Sheltered Workshops - A five (5) bonus point preference shall be granted to bids including products and/or services manufactured, produced or assembled by qualified nonprofit organizations for the blind established pursuant to 41 U.S.C. sections 46 to 48c and sheltered workshops holding a certificate of approval from the Department of Elementary and Secondary Education pursuant to section 178.920 RSMo. Five bonus points will be added to the total evaluation points for bids qualifying for the preference.

If the bidder is an organization for the blind or sheltered workshop, then the bidder should provide evidence of qualifications as described herein (i.e., copy of certificate or certificate number).

If the bidder is utilizing an organization for the blind or sheltered workshop as a subcontractor, then the bidder should submit a letter of intent signed by the organization for the blind or sheltered workshop describing the products/services they will provide and indicating their commitment to aid the contractor's performance under the prospective state contract.

- 3.2.2 The evaluation will be based on lowest and best bid. The criteria for this evaluation will be as follows: 75% will be based on price and 25% will be based on prior experience.
- 3.2.3 The evaluation will include the original contract period plus renewal option periods.
- 3.2.4 Bidders are advised that participation in a tour of the buildings is considered essential to obtain a clear and complete understanding of the requirements of this Request for Bid. Therefore, the bidder needs to document a thorough knowledge of the buildings based on the bidder's attendance at a tour or through other knowledge of the buildings gained from some other means. The state agency will provide the Office of The Adjutant General with the attendance record documenting all bidders who attended a tour. The bidder should provide any relevant information regarding their familiarity with the physical layout, condition, etc. of the buildings.

3.3 Determination for Contract Award:

- 3.3.1 The contract will be awarded to the lowest and best responsive bidder. The State of Missouri reserves the right to reject any bid received as unacceptable for reasons which may include but not necessarily be limited to: 1) receipt of any information, from any

source, regarding unsatisfactory performance of similar services by the bidder within the past five (5) years; 2) failure by the bidder to demonstrate familiarity with the physical layout and condition of the buildings to be cleaned.

4. PRICING PAGE

- 4.1** The bidder shall provide a firm, fixed per month price for the original contract period and a maximum per month price for each potential contract period for providing all services in compliance with the requirements of this Request for Bid. All costs associated with providing the required services shall be included in the stated price(s).

Item #	Description	Original Contract Period <i>firm, fixed price</i>	1 st Renewal Period <i>maximum price</i>	2 nd Renewal Period <i>maximum price</i>
001	Quarterly Preventive Maintenance	\$_____ <i>Per Quarter</i>	\$_____ <i>Per Quarter</i>	\$_____ <i>Per Quarter</i>
002	Interim Maintenance Services – Regular Hours	\$_____ <i>Per Hour</i>	\$_____ <i>Per Hour</i>	\$_____ <i>Per Hour</i>
003	Interim Maintenance Services – Overtime Hours	\$_____ <i>Per Hour</i>	\$_____ <i>Per Hour</i>	\$_____ <i>Per Hour</i>

4.2 MBE/WBE Certification:

Executive Order 98-21 directs state agencies to increase the participation of certified minority business enterprises (MBE) and women business enterprises (WBE) in state procurements. Effective July 1, 1999, MBE/WBE certification will be required to be considered an eligible MBE/WBE in meeting participation goals. If you qualify as a MBE or a WBE as defined in 37.020 RSMo, please mark the appropriate blank below to receive an application for certification or contact the MBE/WBE Purchasing Program at 800-592-6019 or email heyern@mail.oa.state.mo.us.

_____ MBE

_____ WBE

4.3 State Employee Bidding:

Bidders who are employees of the State of Missouri, a member of the General Assembly or a statewide elected official must comply with Sections 105.450 to 105.458 RSMo regarding conflict of interest. If the bidder and/or any of the owners of the bidder's organization are currently an employee of the State of Missouri, a member of the General Assembly or a statewide elected official, please provide the following information.

Name and title of state employee, General Assembly member or statewide elected official: _____

Name of state agency where employed: _____

Percentage of ownership interest in bidder's organization held by state employee, General Assembly member or statewide elected official: _____%

ATTACHMENT # 1
Equipment Listing

Description	Purchase Date
Coffee Urn, Stainless Steel	November 1998
Coffee Urn, Stainless Steel	November 1998
Coffee Urn, Stainless Steel	November 1998
Coffee Urn, Stainless Steel	November 1998
Dishwasher, Jackson AJ-44CE, w/conveyor	May 2001
Drink Dispenser, Cathco D-25-4	November 1996
Food Processor	October 1999
Freezer/Cooler, Walk In Masterbelt	October 1997
Fryer, FryMaster	November 1999
Fryer, FryMaster	January 1997
Fryer, Vulcan Hart	June 2001
Hot Dog Roller Grill	September 1997
Ice Cream Cooler	October 1999
Ice Machine	May 1999
Ice Machine	November 1999
Ice Machine, Manitowac S570	June 2001
Meat Slicer	September 2000
Meat Slicer	February 2003
Milk Dispenser, SilverKing SK31MP	July 2001
Mixer, Hobart 20 Quart Table Top	October 1998
Oven, Duke 613-G2X	October 1998
Oven, Duke 613-G2X	October 1998
Oven, Hobart Convection	October 1998
Oven, Vulcan Hart VCE10F	June 2001
Oven, Vulcan Hart w/Flat Grill	June 2001
Pop Corn Popper, Paragon	November 2004
Range, Gas 48"	October 1998
Range, Gas 72 Inch	December 1998
Range, Gas, Vulcan Hart	June 2001
Refrigerator	August 1995
Refrigerator, 2 Door Undercounter	May 2001
Refrigerator, 3 Door	May 2001
Refrigerator, 8 Door	December 1998
Refrigerator, True	June 2001
Refrigerator, True	June 2001
Refrigerator, True	June 2001
Refrigerator, True w/Glass Doors	June 2001
Refrigerator, True w/Glass Doors	June 2001
Refrigerator, True w/Glass Doors	June 2001
Sink Sanitizing Heater	September 1997
Water Heater Booster	May 2001
Ventilation Hoods	November 1996

Attachment 2

<u>HOLIDAY</u>	<u>HOLIDAYS</u>	<u>DATE OBSERVED</u>
New Year's Day	Monday	January 2, 2006
Martin Luther King Day	Monday	January 16, 2006
Lincoln's Birthday	Monday	February 13, 2006
President's Day	Monday	February 20, 2006
Truman's Birthday	Monday	May 9, 2005
Memorial Day	Monday	May 29, 2005
Independence Day	Tuesday	July 4, 2005
Labor Day	Monday	September 5, 2005
Columbus Day	Thursday	October 12, 2005
Veterans Day(Observed)	Friday	November 11, 2005
Thanksgiving Day	Thursday	November 24, 2005
Christmas Day	Monday	December 26, 2005

EXHIBIT A

PRIOR EXPERIENCE

1. **Prior Services Performed for:**

Company Name:

Address:

Contact Name:

Telephone Number:

Description of Prior Services (include dates):

2. **Prior Services Performed for:**

Company Name:

Address:

Contact Name:

Telephone Number:

Description of Prior Services (include dates):

3. **Prior Services Performed for:**

Company Name:

Address:

Contact Name:

Telephone Number:

Description of Prior Services (include dates):

Exhibit B
STATE OF MISSOURI
OFFICE OF THE ADJUTANT GENERAL

TERMS AND CONDITIONS -- REQUEST FOR BID

1. TERMINOLOGY/DEFINITIONS

Whenever the following words and expressions appear in an Request for Bid (RFB) document or any amendment thereto, the definition or meaning described below shall apply.

- a. Agency and/or State Agency means the statutory unit of state government in the State of Missouri for which the equipment, supplies, and/or services are being purchased by the Office of The Adjutant General (OTAG). The agency is also responsible for payment.
- b. Amendment means a written, official modification to an RFB or to a contract.
- c. Attachment applies to all forms which are included with an RFB to incorporate any informational data or requirements related to the performance requirements and/or specifications.
- d. Bid Opening Date and Time and similar expressions mean the exact deadline required by the RFB for the receipt of bids.
- e. Bidder means the person or organization that responds to an RFB by submitting a bid with prices to provide the equipment, supplies, and/or services as required in the RFB document.
- f. Buyer means the procurement staff member of the OTAG. The Contact Person as referenced herein is usually the Buyer.
- g. Contract means a legal and binding agreement between two or more competent parties, for a consideration for the procurement of equipment, supplies, and/or services.
- h. Contractor means a person or organization who is a successful bidder as a result of an RFB and who enters into a contract.
- i. Exhibit applies to forms which are included with an RFB for the bidder to complete and submit with the bid prior to the specified opening date and time.
- j. Request for Bid (RFB) means the solicitation document issued by the OTAG to potential bidders for the purchase of equipment, supplies, and/or services as described in the document. The definition includes these Terms and Conditions as well as all Pricing Pages, Exhibits, Attachments, and Amendments thereto.
- k. May means that a certain feature, component, or action is permissible, but not required.
- l. Must means that a certain feature, component, or action is a mandatory condition. Failure to provide or comply will result in a bid being considered non-responsive.
- m. Pricing Page(s) applies to the form(s) on which the bidder must state the price(s) applicable for the equipment, supplies, and/or services required in the RFB. The pricing pages must be completed and submitted by the bidder with the bid prior to the specified bid opening date and time.
- n. RSMo (Revised Statutes of Missouri) refers to the body of laws enacted by the Legislature which govern the operations of all agencies of the State of Missouri. Chapter 34 of the statutes is the primary chapter governing the operations of OTAG.
- o. Shall has the same meaning as the word must.
- p. Should means that a certain feature, component and/or action is desirable but not mandatory.

2. APPLICABLE LAWS AND REGULATIONS

- a. The contract shall be construed according to the laws of the State of Missouri. The contractor shall comply with all local, state, and federal laws and regulations related to the performance of the contract to the extent that the same may be applicable.
- b. To the extent that a provision of the contract is contrary to the Constitution or laws of the State of Missouri or of the United States, the provisions shall be void and unenforceable. However, the balance of the contract shall remain in force between the parties unless terminated by consent of both the contractor and the OTAG.
- c. The contractor must be registered and maintain good standing with the Secretary of State of the State of Missouri and other regulatory agencies, as may be required by law or regulations.
- d. The contractor must timely file and pay all Missouri sales, withholding, corporate and any other required Missouri tax returns and taxes, including interest and additions to tax.

- e. The exclusive venue for any legal proceeding relating to or arising out of the RFB or resulting contract shall be in the Circuit Court of Cole County, Missouri.

3. OPEN COMPETITION/REQUEST FOR BID DOCUMENT

- a. It shall be the bidder's responsibility to ask questions, request changes or clarification, or otherwise advise the OTAG if any language, specifications or requirements of an RFB appear to be ambiguous, contradictory, and/or arbitrary, or appear to inadvertently restrict or limit the requirements stated in the RFB to a single source. Any and all communication from bidders regarding specifications, requirements, competitive bid process, etc., must be directed to the buyer from the OTAG, unless the RFB specifically refers the bidder to another contact. Such communication should be received at least ten calendar days prior to the official bid opening date.
- b. Every attempt shall be made to ensure that the bidder receives an adequate and prompt response. However, in order to maintain a fair and equitable bid process, all bidders will be advised, via the issuance of an amendment to the RFB, of any relevant or pertinent information related to the procurement. Therefore, bidders are advised that unless specified elsewhere in the RFB, any questions received less than ten calendar days prior to the RFB opening date may not be answered.
- c. Bidders are cautioned that the only official position of the State of Missouri is that which is issued by the OTAG in the RFB or an amendment thereto. No other means of communication, whether oral or written, shall be construed as a formal or official response or statement.
- d. The OTAG monitors all procurement activities to detect any possibility of deliberate restraint of competition, collusion among bidders, price-fixing by bidders, or any other anticompetitive conduct by bidders which appears to violate state and federal antitrust laws. Any suspected violation shall be referred to the Missouri Attorney General's Office for appropriate action.
- e. The OTAG reserves the right to officially amend or cancel an RFB after issuance.

4. PREPARATION OF BIDS

- a. Bidders must examine the entire RFB carefully. Failure to do so shall be at bidder's risk.
- b. Unless otherwise specifically stated in the RFB, all specifications and requirements constitute minimum requirements. All bids must meet or exceed the stated specifications and requirements.
- c. Unless otherwise specifically stated in the RFB, any manufacturer names, trade names, brand names, information and/or catalog numbers listed in a specification and/or requirement are for informational purposes only and are not intended to limit competition. The bidder may offer any brand which meets or exceeds the specification for any item, but must state the manufacturer's name and model number for any such brands in the bid. In addition, the bidder shall explain, in detail, (1) the reasons why the proposed equivalent meets or exceeds the specifications and/or requirements and (2) why the proposed equivalent should not be considered an exception thereto. Bids which do not comply with the requirements and specifications are subject to rejection without clarification.
- d. Bids lacking any indication of intent to bid an alternate brand or to take an exception shall be received and considered in complete compliance with the specifications and requirements as listed in the RFB.
- e. In the event that the bidder is an agency of state government or other such political subdivision which is prohibited by law or court decision from complying with certain provisions of an RFB, such a bidder may submit a bid which contains a list of statutory limitations and identification of those prohibitive clauses which will be modified via a clarification conference between the OTAG and the bidder, if such bidder is selected for contract award. The clarification conference will be conducted in order to agree to language that reflects the intent and compliance of such law and/or court order and the RFB. Any such bidder needs to include in the bid, a complete list of statutory references and citations for each provision of the RFB which is affected by this paragraph.
- f. All equipment and supplies offered in a bid must be new, of current production, and available for marketing by the manufacturer unless the RFB clearly specifies that used, reconditioned, or remanufactured equipment and supplies may be offered.
- g. Prices shall include all packing, handling and shipping charges FOB destination, freight prepaid and allowed unless otherwise specified in the RFB.
- h. Prices bid shall remain valid for 90 days from bid opening unless otherwise indicated. If the bid is accepted, prices shall be firm for the specified contract period.
- i. Any foreign bidder not having an Employer Identification Number assigned by the United States Internal Revenue Service (IRS) must submit a completed IRS Form W-8 prior to or with the submission of their bid in order to be considered for award.

5. PREFERENCES

- a. In the evaluation of bids, preferences shall be applied in accordance with Chapter 34 RSMo. Contractors should apply the same preferences in selecting subcontractors.
- b. By virtue of statutory authority, a preference will be given to materials, products, supplies, provisions and all other articles produced, manufactured, made or grown within the State of Missouri and to all firms, corporations or individuals doing business as Missouri firms, corporations or individuals. Such preference shall be given when quality is equal or better and delivered price is the same or less.
- c. In accordance with Executive Order 98-21, contractors are encouraged to utilize certified minority and women-owned businesses in selecting subcontractors.

6. EVALUATION/AWARD

- a. Any clerical error, apparent on its face, may be corrected by the buyer before contract award. Upon discovering an apparent clerical error, the buyer shall contact the bidder and request clarification of the intended bid. The correction shall be incorporated in the notice of award. Examples of apparent clerical errors are: 1) misplacement of a decimal point; and 2) obvious mistake in designation of unit.
- b. Any pricing information submitted by a bidder shall be subject to evaluation if deemed by the OTAG to be in the best interest of the State of Missouri.
- c. The bidder is encouraged to propose price discounts for prompt payment or propose other price discounts that would benefit the State of Missouri. However, unless otherwise specified in the RFB, pricing shall be evaluated at the maximum potential financial liability to the State of Missouri.
- d. Awards shall be made to the bidder whose bid (1) complies with all mandatory specifications and requirements of the RFB and (2) is the lowest and best bid, considering price, responsibility of the bidder, and all other evaluation criteria specified in the RFB and (3) complies with Sections 34.010 and 34.070 RSMo and Executive Order 04-09.
- e. In the event all bidders fail to meet the same mandatory requirement in an RFB, OTAG reserves the right, at its sole discretion, to waive that requirement for all bidders and to proceed with the evaluation. In addition, the OTAG reserves the right to waive any minor irregularity or technicality found in any individual bid.
- f. When evaluating a bid, the State of Missouri reserves the right to consider relevant information and fact, whether gained from a bid, from a bidder, from bidder's references, or from any other source.
- g. Any information submitted with the bid, regardless of the format or placement of such information, may be considered in making decisions related to the responsiveness and merit of a bid and the award of a contract.
- h. Any award of a contract shall be made by notification from the OTAG to the successful bidder. The OTAG reserves the right to make awards by item, group of items, or an all or none basis. The grouping of items awarded shall be determined by OTAG based upon factors such as item similarity, location, administrative efficiency, or other considerations in the best interest of the State of Missouri.
- i. All bids and associated documentation which were submitted on or before the official opening date and time will be considered open records pursuant to Section 610.021 RSMo following the official opening of bids.
- j. The OTAG reserves the right to request clarification of any portion of the bidder's response in order to verify the intent of the bidder. The bidder is cautioned, however, that its response may be subject to acceptance or rejection without further clarification.
- k. Any bid award protest must be received within ten (10) calendar days after the date of award in accordance with the requirements of 1 CSR 40-1.050 (10).
- l. The final determination of contract award(s) shall be made by OTAG.

7. CONTRACT/PURCHASE ORDER

- a. By submitting a bid, the bidder agrees to furnish any and all equipment, supplies and/or services specified in the RFB, at the prices quoted, pursuant to all requirements and specifications contained therein.
- b. A binding contract shall consist of: (1) the RFB and any amendments thereto, (2) the contractor's response (bid) to the RFB, (3) clarification of the bid, if any, and (4) OTAG's acceptance of the response (bid) by "notice of award" or by "purchase order."
- c. A notice of award does not constitute an authorization for shipment of equipment or supplies or a directive to proceed with services. Before providing equipment, supplies and/or services, the contractor must receive a

properly authorized purchase order unless the purchase is equal to or less than \$3,000. Purchases equal to or less than \$3,000 may be processed with a purchase order at the discretion of the state agency.

- d. The contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained therein. Any change, whether by modification and/or supplementation, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representative of the contractor and the OTAG or by a modified purchase order prior to the effective date of such modification. The contractor expressly and explicitly understands and agrees that no other method and/or no other document, including correspondence, acts, and oral communications by or from any person, shall be used or construed as an amendment or modification.

8. INVOICING AND PAYMENT

- a. The State of Missouri does not pay state or federal taxes unless otherwise required under law or regulation.
- b. The statewide financial management system has been designed to capture certain receipt and payment information. For each purchase order received, an invoice must be submitted that references the purchase order number and must be itemized in accordance with items listed on the purchase order. Failure to comply with this requirement may delay processing of invoices for payment.
- c. The contractor shall not transfer any interest in the contract, whether by assignment or otherwise, without the prior written consent of the OTAG.
- d. Payment for all equipment, supplies, and/or services required herein shall be made in arrears unless otherwise indicated in the RFB.
- e. The State of Missouri assumes no obligation for equipment, supplies, and/or services shipped or provided in excess of the quantity ordered. Any unauthorized quantity is subject to the state's rejection and shall be returned at the contractor's expense.
- f. All invoices for equipment, supplies, and/or services purchased by the State of Missouri shall be subject to late payment charges as provided in Section 34.055 RSMo.

9. DELIVERY

Time is of the essence. Deliveries of equipment, supplies, and/or services must be made no later than the time stated in the contract or within a reasonable period of time, if a specific time is not stated.

10. INSPECTION AND ACCEPTANCE

- a. No equipment, supplies, and/or services received by an agency of the state pursuant to a contract shall be deemed accepted until the agency has had reasonable opportunity to inspect said equipment, supplies, and/or services.
- b. All equipment, supplies, and/or services which do not comply with the specifications and/or requirements or which are otherwise unacceptable or defective may be rejected. In addition, all equipment, supplies, and/or services which are discovered to be defective or which do not conform to any warranty of the contractor upon inspection (or at any later time if the defects contained were not reasonably ascertainable upon the initial inspection) may be rejected.
- c. The State of Missouri reserves the right to return any such rejected shipment at the contractor's expense for full credit or replacement and to specify a reasonable date by which replacements must be received.
- d. The State of Missouri's right to reject any unacceptable equipment, supplies, and/or services shall not exclude any other legal, equitable or contractual remedies the state may have.

11. WARRANTY

- a. The contractor expressly warrants that all equipment, supplies, and/or services provided shall: (1) conform to each and every specification, drawing, sample or other description which was furnished to or adopted by the OTAG, (2) be fit and sufficient for the purpose expressed in the RFB, (3) be merchantable, (4) be of good materials and workmanship, and (5) be free from defect.
- b. Such warranty shall survive delivery and shall not be deemed waived either by reason of the state's acceptance of or payment for said equipment, supplies, and/or services.

12. CONFLICT OF INTEREST

- a. Officials and employees of the state agency, its governing body, or any other public officials of the State of Missouri must comply with Sections 105.452 and 105.454 RSMo regarding conflict of interest.
- b. The contractor hereby covenants that at the time of the submission of the bid the contractor has no other contractual relationships which would create any actual or perceived conflict of interest. The contractor further agrees that during the term of the contract neither the contractor nor any of its employees shall acquire any other contractual relationships which create such a conflict.

13. REMEDIES AND RIGHTS

- a. No provision in the contract shall be construed, expressly or implied, as a waiver by the State of Missouri of any existing or future right and/or remedy available by law in the event of any claim by the State of Missouri of the contractor's default or breach of contract.
- b. The contractor agrees and understands that the contract shall constitute an assignment by the contractor to the State of Missouri of all rights, title and interest in and to all causes of action that the contractor may have under the antitrust laws of the United States or the State of Missouri for which causes of action have accrued or will accrue as the result of or in relation to the particular equipment, supplies, and/or services purchased or procured by the contractor in the fulfillment of the contract with the State of Missouri.

14. CANCELLATION OF CONTRACT

- a. In the event of material breach of the contractual obligations by the contractor, the Office of the Adjutant General(OTAG) may cancel the contract. At its sole discretion, the OTAG may give the contractor an opportunity to cure the breach or to explain how the breach will be cured. The actual cure must be completed within no more than 10 working days from notification, or at a minimum the contractor must provide OTAG within 10 working days from notification a written plan detailing how the contractor intends to cure the breach.
- b. If the contractor fails to cure the breach or if circumstances demand immediate action, the OTAG will issue a notice of cancellation terminating the contract immediately.
- c. If the OTAG cancels the contract for breach, the OTAG reserves the right to obtain the equipment, supplies, and/or services to be provided pursuant to the contract from other sources and upon such terms and in such manner as the OTAG deems appropriate and charge the contractor for any additional costs incurred thereby.
- d. The contractor understands and agrees that funds required to fund the contract must be appropriated by the General Assembly of the State of Missouri for each fiscal year included within the contract period. The contract shall not be binding upon the state for any period in which funds have not been appropriated, and the state shall not be liable for any costs associated with termination caused by lack of appropriations.

15. COMMUNICATIONS AND NOTICES

Any notice to the contractor shall be deemed sufficient when deposited in the United States mail postage prepaid, transmitted by facsimile, transmitted by e-mail or hand-carried and presented to an authorized employee of the contractor.

16. BANKRUPTCY OR INSOLVENCY

- a. Upon filing for any bankruptcy or insolvency proceeding by or against the contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the contractor must notify the OTAG immediately.
- b. Upon learning of any such actions, the OTAG reserves the right, at its sole discretion, to either cancel the contract or affirm the contract and hold the contractor responsible for damages.

17. INVENTIONS, PATENTS AND COPYRIGHTS

The contractor shall defend, protect, and hold harmless the State of Missouri, its officers, agents, and employees against all suits of law or in equity resulting from patent and copyright infringement concerning the contractor's performance or products produced under the terms of the contract.

18. NON-DISCRIMINATION AND AFFIRMATIVE ACTION

In connection with the furnishing of equipment, supplies, and/or services under the contract, the contractor and all subcontractors shall agree not to discriminate against recipients of services or employees or applicants for employment on the basis of race, color, religion, national origin, sex, age, disability, or veteran status. If the contractor or subcontractor employs at least 50 persons, they shall have and maintain an affirmative action program which shall include:

- a. A written policy statement committing the organization to affirmative action and assigning management responsibilities and procedures for evaluation and dissemination;
- b. The identification of a person designated to handle affirmative action;
- c. The establishment of non-discriminatory selection standards, objective measures to analyze recruitment, an upward mobility system, a wage and salary structure, and standards applicable to layoff, recall, discharge, demotion, and discipline;
- d. The exclusion of discrimination from all collective bargaining agreements; and
- e. Performance of an internal audit of the reporting system to monitor execution and to provide for future planning.

If discrimination by a contractor is found to exist, the OTAG shall take appropriate enforcement action which may include, but not necessarily be limited to, cancellation of the contract, suspension, or debarment by the OTAG until corrective action by the contractor is made and ensured, and referral to the Attorney General's Office, whichever enforcement action may be deemed most appropriate.

19. AMERICANS WITH DISABILITIES ACT

In connection with the furnishing of equipment, supplies, and/or services under the contract, the contractor and all subcontractors shall comply with all applicable requirements and provisions of the Americans with Disabilities Act (ADA).

20. FILING AND PAYMENT OF TAXES

The commissioner of administration and other agencies to which the state purchasing law applies shall not contract for goods or services with a vendor if the vendor or an affiliate of the vendor makes sales at retail of tangible personal property or for the purpose of storage, use, or consumption in this state but fails to collect and properly pay the tax as provided in chapter 144, RSMo. For the purposes of this section, "affiliate of the vendor" shall mean any person or entity that is controlled by or is under common control with the vendor, whether through stock ownership or otherwise. Therefore bidder's failure to maintain compliance with chapter 144, RSMo may eliminate their bid from consideration for award.

21. TITLES

Titles of paragraphs used herein are for the purpose of facilitating reference only and shall not be construed to infer a contractual construction of language.

Revised 01/21/05